

## Message Text

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ACTION EA-09

INFO OCT-01 ISO-00 ERDA-05 AID-05 CEA-01 CIAE-00 CIEP-01

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/098 W

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R 190432Z DEC 75

FM AMEMBASSY CANBERRA

TO SECSTATE WASHDC 7130

INFO AMEMBASSY WELLINGTON

AMEMBASSY PORT MORESBY

AMEMBASSY JAKARTA

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EO 11652: N/A

TAGS: ENRG, EMIN, PLOS, AS

SUBJ: AUSTRALIAN COURTS RULE IN FAVOR OF COMMONWEALTH SOVERIGNTY  
OVER OFFSHORE AREAS

1. SUMMARY. THE FULL HIGH COURT OF AUSTRALIA RULED ON DEC. 17  
THAT THE COMMONWEALTH HAS SOVEREIGNTY OVER THE AIRSPACE, WATER  
COLUMN, SEABED, AND SUBSOIL OF THE TERRITORIAL SEA AND CONTINEN-  
TAL SHELF OF AUSTRALIA, HOWEVER DELINEATED. THE HIGH COURT  
DECISION VALIDATES THE "SEAS AND SUBMERGED LANDS ACT, 1973." THIS  
ACT RESULTED IN THE STATES BRINGING SUIT AGAINST THE COMMONWEALTH  
CHALLENGING THE VALIDITY OF THE 1973 LEGISLATION.

2. PRIOR TO THE COURT DECISION, THE LABOR/COUNTRY PARTY MINERALS  
AND ENERGY STATEMENT ASSURED THE STATES THAT THE FEDERAL GOVERNMENT  
WOULD SEE THAT THE STATES RETAINED AN EQUITABLE RETURN FROM THE  
EXPLOITATION OF OFFSHORE MINERAL RESOURCES. THE SINCERITY OF  
THE COALITION WILL NOW BE TESTED AS LEGALLY THEY HAVE THE  
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AUTHORITY TO COMPLETELY DOMINATE THE DEVELOPMENT OF OFFSHORE

RESOURCES OVERRIDING THE LEGISLATION OF THE STATES PERTAINING TO OFFSHORE RESOURCES.

3. THE HIGH COURT DECISION DOES NOT APPLY TO THE PRODUCTION OF PETROLEUM IN OFFSHORE AREAS. THE EXPLORATION AND EXPLOITATION OF PETROLEUM RESOURCES IN OFFSHORE AREAS IS COVERED BY THE "PETROLEUM (SUBMERGED LANDS) ACT, 1967." THIS ACT PROVIDES FOR JOINT STATE-COMMONWEALTH COOPERATION IN DEVELOPING OFFSHORE PETROLEUM RESOURCES. END SUMMARY.

4. THE HIGH COURT DECISION SUSTAINS THE VALIDITY OF THE "SEAS AND SUBMERGED LANDS ACT, 1973." THE COURT TOOK THE VIEW THAT ONLY THE COMMONWEALTH COULD HANDLE THE INTERNATIONAL NEGOTIATIONS THAT APPLY TO THE MARITIME SPHERE BECAUSE ONLY THE COMMONWEALTH WOULD BE RECOGNIZED BY THE INTERNATIONAL COMMUNITY AS AN INTERNATIONAL PERSON.

5. MR. ANTHONY, THE MINISTER FOR NATIONAL RESOURCES, MADE IT CLEAR IN A STATEMENT ON DEC. 17, THAT THE STATES WILL HAVE A ROLE IN THE DEVELOPMENT OF OFFSHORE RESOURCES DESPITE THE DECISION OF THE HIGH COURT. THE DETAILS CONCERNING THE PARTICIPATION OF THE STATES WITH THE COMMONWEALTH IN THE DEVELOPMENT OF OFFSHORE RESOURCES WILL BE WORKED OUT SOON. THE IMPLICATION IS THAT ALTHOUGH THE STATES HAVE BEEN STRIPPED OF ANY LEGAL RIGHTS RELEVANT TO OFFSHORE RESOURCES, THE STATES WILL CONTINUE TO HAVE A ROLE IN THE DECISION MAKING PROCESS.

6. ACCORDING TO ANTHONY, THE PREVIOUS ROYALTY ARRANGEMENT BETWEEN THE STATES AND THE COMMONWEALTH, WHICH WAS A 60/40 PERCENT SPLIT RESPECTIVELY, WILL NOT BE ALTERED.

7. THE COURT DECISION GIVES THE LIBERAL/NCP COALITION THE CHANCE TO PRACTICE THEIR "COOPERATIVE FEDERALISM" WHICH WAS A PART OF THEIR MINERALS AND ENERGY PLATFORM. CURRENTLY, THE STATE GOVERNMENTS EXERCISE CONTROL OVER THE OPERATIONS IN THE OFFSHORE AREAS; THE COMMONWEALTH DELEGATES AUTHORITY TO THE STATE MINISTER OF MINES. AN ARGUMENT FOR THE MAINTENANCE OF THE CURRENT STATE-COMMONWEALTH ARRANGEMENT FOR OFFSHORE EXPLORATION AND EXPLOITATION, IS THAT THE CURRENT SYSTEM WORKS WELL AS THE STATES' MINES DEPARTMENTS HAVE DEMONSTRATED TECHNICAL COMPETENCE IN ADMINISTER-LIMITED OFFICIAL USE

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ING SAFETY PROCEDURES AND LEASE ARRANGEMENTS.

8. ALTHOUGH THE "SEAS AND SUBMERGED LANDS ACT, 1973", DID NOT PERTAIN TO THE DEVELOPMENT OF PETROLEUM RESOURCES, IT CAN BE ASSUMED THAT THE COURT DECISION WILL ALSO APPLY TO OFFSHORE PETROLEUM AND THE COMMONWEALTH WILL HAVE COMPLETE CONTROL OF THE RESOURCES. THIS DIFFERS FROM THE "PETROLEUM (SUBMERGED LANDS) ACT, 1967-68," WHICH PROVIDED FOR STATE-COMMONWEALTH COOPERATION,

RATHER THAN EXCLUSIVE COMMONWEALTH CONTROL IN DEVELOPING OFFSHORE PETROLEUM RESOURCES. IF THE COMMONWEALTH IS TO ASSUME CONTROL OF OFFSHORE PETROLEUM RESOURCES, AMENDING LEGISLATION WOULD LIKELY HAVE TO BE INTRODUCED IN PARLIAMENT.

9. ANTHONY HAS STATED THAT A TOP PRIORITY OF THE NEW GOVERNMENT IS TO GET THE NORTH-WEST SHELF GAS PROJECT UNDER WAY. IT SEEMS APPARENT THAT THE WEST AUSTRALIA GOVERNMENT ROLE IN THE PROJECT WILL BE SUBSTANTIAL. SIR CHARLES COURT, THE PREMIER OF WESTERN AUSTRALIA HAS SAID THAT HE HAS A CLEAR UNDERSTANDING WITH THE PRESENT GOVERNMENT THAT THERE WOULD CONTINUE TO BE STATE PARTICIPATION IN THE DEVELOPMENT OF OFFSHORE RESOURCES.

10. THE COURT DECISION CAN GIVE THE COMMONWEALTH POWER WHEN DEALING WITH STATES IN OTHER ISSUES. FOR EXAMPLE, THE COMMONWEALTH WILL BE ABLE TO BE MORE ASSERTIVE IN ITS APPROACH TO THE GOVERNMENT OF QUEENSLAND WHEN A SOLUTION TO THE PAPUA-NEW GUINEA BOUNDARY IN THE TORRES STRAIT IS DISCUSSED.

11. COMMENT: THE ACTIONS OF THE LIBERAL/NCP COALITION WILL BE CLOSELY WATCHED AS THEY RELATE TO COMMONWEALTH-STATE RELATIONS. THE COURT DECISION VESTS IN THE COMMONWEALTH GOVERNMENT COMPLETE SOVEREIGNTY OVER OFFSHORE RESOURCES. THE COURT DECISION REVOKES THE RIGHT OF THE STATES TO CONTROL THE DEVELOPMENT OF THE MINERAL RESOURCES IN THEIR OFFSHORE AREA; A RIGHT GIVEN IN THE CONSTITUTION WHEN THE FEDERATION WAS FORMED. A NARROW LEGALISTIC INTERPRETATION OF THE CONSTITUTIONAL RIGHT WOULD SHOW THAT THE STATES NEVER HAD CONTROL OVER THE TERRITORIAL WATERS AT ANY TIME.

12. ASSUMING THAT THE LIBERAL/NCP POLICY OF "COOPERATIVE FEDERALISM" PREVAILS, THERE WILL BE LITTLE DISPUTE BETWEEN COMMONWEALTH AND STATE AUTHORITIES WHEN THE DEVELOPMENT OF OFFSHORE RESOURCES IS PURSUED MORE URGENTLY.  
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13. FURTHER STATEMENTS FROM BOTH COMMONWEALTH AND STATE AUTHORITIES WILL BE FORTHCOMING WHEN THE COOPERATIVE MEASURES ARE WORKED OUT. EMBASSY WILL KEEP THE DEPARTMENT APPRISED.  
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## Message Attributes

**Automatic Decaptioning:** X  
**Capture Date:** 01 JAN 1994  
**Channel Indicators:** n/a  
**Current Classification:** UNCLASSIFIED  
**Concepts:** LAW OF THE SEA, COURT DECISIONS  
**Control Number:** n/a  
**Copy:** SINGLE  
**Draft Date:** 19 DEC 1975  
**Decaption Date:** 01 JAN 1960  
**Decaption Note:**  
**Disposition Action:** RELEASED  
**Disposition Approved on Date:**  
**Disposition Authority:** MorefiRH  
**Disposition Case Number:** n/a  
**Disposition Comment:** 25 YEAR REVIEW  
**Disposition Date:** 28 MAY 2004  
**Disposition Event:**  
**Disposition History:** n/a  
**Disposition Reason:**  
**Disposition Remarks:**  
**Document Number:** 1975CANBER08453  
**Document Source:** CORE  
**Document Unique ID:** 00  
**Drafter:** n/a  
**Enclosure:** n/a  
**Executive Order:** N/A  
**Errors:** N/A  
**Film Number:** D750441-0415  
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**Office:** ACTION EA  
**Original Classification:** LIMITED OFFICIAL USE  
**Original Handling Restrictions:** n/a  
**Original Previous Classification:** n/a  
**Original Previous Handling Restrictions:** n/a  
**Page Count:** 3  
**Previous Channel Indicators:** n/a  
**Previous Classification:** LIMITED OFFICIAL USE  
**Previous Handling Restrictions:** n/a  
**Reference:** n/a  
**Review Action:** RELEASED, APPROVED  
**Review Authority:** MorefiRH  
**Review Comment:** n/a  
**Review Content Flags:**  
**Review Date:** 08 JUL 2003  
**Review Event:**  
**Review Exemptions:** n/a  
**Review History:** RELEASED <08 JUL 2003 by ShawDG>; APPROVED <12 AUG 2003 by MorefiRH>  
**Review Markings:**

Margaret P. Grafeld  
Declassified/Released  
US Department of State  
EO Systematic Review  
06 JUL 2006

**Review Media Identifier:**  
**Review Referrals:** n/a  
**Review Release Date:** n/a  
**Review Release Event:** n/a  
**Review Transfer Date:**  
**Review Withdrawn Fields:** n/a  
**Secure:** OPEN  
**Status:** NATIVE  
**Subject:** AUSTRALIAN COURTS RULE IN FAVOR OF COMMONWEALTH SOVERIGNTY OVER OFFSHORE AREAS  
**TAGS:** ENRG, EMIN, PLOS, AS  
**To:** STATE  
**Type:** TE  
**Markings:** Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 06 JUL 2006